Supreme Court, U.S.
FILED
FEB 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1220

In The

Supreme Court of the United States

October Term, 1985

HUGH KNOELL BUILDERS, INC.,
Petitioner

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION,
an Arizona corporation,

Respondent

RESPONSE TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Does this Court have jurisdiction under 28 U.S.C. § 1257(3) when the federal question presented was not raised in, or decided by, the state courts?

2. Does a state appellate court violate federal due process or equal protection by issuing a short memorandum decision of a state law question?

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OPINION BELOW

The opinion of the Arizona Court of Appeals is an unreported memorandum decision. The text of the decision is reprinted in Petitioner's Appendix to its Petition at p. 1-1.

JURISDICTION

Petitioner alleges that this Court's jurisdiction rests upon 28 U.S.C. § 1257 (presumably § 1257(3) since it filed a petition for writ of certiorari). Respondent contends that jurisdiction is absent, however, because no federal question was raised or decided in the courts below. The jurisdictional defect is discussed in the argument section of this brief.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1257(3):

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . .
>
> (3) By writ of certiorari, where the validity or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

U.S. Const. Amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, a construction company, brought this action for fraud against its lender, the Respondent.

Petitioner Knoell alleged that Respondent First Federal Savings and Loan Association promised to "see us through" financial difficulty in 1974. First Federal allegedly later refused to make new loans to the ailing builder. Knoell contended that this constituted common law fraud.

At trial, Knoell failed to provide the kind of damages evidence required by Arizona common law. It lacked evidence of the availability or cost of substitute loans. On the other hand, the evidence showed that on the whole Knoell's finances benefited from its dealings with First Federal.

The Superior Court of Maricopa County, Arizona granted a directed verdict in favor of First Federal based on Knoell's failure to prove any damages. The court then entered a judgment for First Federal, and later denied Knoell's motion for new trial.

After briefing and oral argument, the Arizona Court of Appeals decided Knoell's appeal. The Court's memorandum decision affirmed for the reason stated by the trial court. Knoell filed a motion for reconsideration, which the Court of Appeals denied.

Knoell filed a timely petition for review in the Supreme Court of Arizona, asserting inter alia that the memorandum decision was inadequate under Arizona law. Knoell argued that Arizona's constitution and statutes required a more detailed statement of the reasons for the decision by the Court of

Appeals. The Supreme Court denied the petition by order dated October 22, 1985.

Knoell never asserted any federal constitutional question at any stage of the state court proceedings.

SUMMARY OF ARGUMENT

Because the federal questions were not presented to and decided by the state courts, no jurisdiction exists in this Court under 28 U.S.C. § 1257(3). Petitioner advanced only state law issues below and cannot argue for the first time here that a federal right is involved. Although petitioner's federal constitutional claim is directed at acts by the Arizona Court of Appeals, petitioner could have asserted this claim in the Arizona Supreme Court.

Alternatively, petitioner's federal claim is insubstantial. The petition therefore should be denied as a discretionary matter. No federal precedent supports petitioner's theory that an appellate opinion which is too short violates due process and equal protection. The federal constitution

imposes no standard on the state appellate courts' articulation of their ratio decidendi. Moreover, the Arizona Court of Appeals adequately stated its rationale by indicating its agreement with the trial court's statement of reasons for its decision.

ARGUMENT

I. FEDERAL JURISDICTION IS ABSENT BECAUSE THE FEDERAL QUESTION PRESENTED WAS NOT RAISED OR DECIDED BELOW.

Petitioner invokes the certiorari jurisdiction of this Court under 28 U.S.C. § 1257(3). The statute permits review of a final judgment by the highest state court in which a decision was obtained, but only

> where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties of laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Petitioner argues in this Court for the first time that acts by the Arizona Court of Appeal violated his federal rights to due

process and equal protection. However, petitioner did not include this or any other federal claims in its petition to the Arizona Supreme Court. Although petitioner complained to the Arizona Supreme Court that the memorandum decision of the Court of Appeals was deficient, petitioner's argument was based solely on state law.

Certiorari jurisdiction is lacking when the federal question presented was neither raised nor decided in the state courts. This Court dismissed a writ of certiorari for want of jurisdiction in Cardinale v. Louisiana, 394 U.S. 437 (1969) because petitioner had failed to assert any federal issue in the state courts. Justice White traced this rule to the early days of the Republic:

> It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions. In Crowell v. Randell, 10 Pet.

> 368, (1836), Justice Story . . . came to the conclusion that the Judiciary Act of 1789 . . . vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below.

394 U.S. at 438.

Even if petitioner were correct that its federal rights have been violated, the jurisdictional bar precludes granting the petition. This rule has been applied in "an unbroken line of precedent." Beck v. Washington, 369 U.S. 541, 553 (1962) (citing cases).

The petition therefore should be dismissed or denied.

II. THE STATE APPELLATE COURT VIOLATED NEITHER DUE PROCESS NOR EQUAL PROTECTION BY ISSUING A SHORT MEMORANDUM DECISION OF A STATE LAW QUESTION.

Petitioner's argument rests on its statement that the Arizona Court of Appeals decided this case "without stating the grounds

for its decision . . ." (Pet. at 3). This premise is incorrect. The Court of Appeals simply adopted the trial court's reasoning: "We agree with the trial court that appellant failed to demonstrate any damages resulting from any action on the part of appellee." (Petitioner's Appendix 1). The trial court had discussed the issue at length; restating its conclusions would have been superfluous.

Even if the state court had given no reasons, that would not violate any federal rights. Federal due process and equal protection prohibit "invidious" and "arbitrary" discrimination in state appellate requirements. Lindsey v. Normet, 405 U.S. 56 (1972); Rinaldi v. Yeager, 384 U.S. 305 (1966). However, there was no discrimination against Petitioner in this case, let alone invidious or arbitrary action.

Deciding appeals without a statement of reasons is not arbitrary or invidious.

Appellate courts may choose not to waste scarce judicial resources on cases which do not require opinions. As the United States Court of Appeals observed in defending its one-word dispositions:

> [O]ur experience, bearing out that of appellate courts generally, is convincing that in a number of cases there is no real need for an opinion at all. Where in a given case that is the considered judicial judgment of three Judges comprising a panel, then it is perfectly obvious that the now limited and precious judicial resources can be husbanded by a procedure which eliminates that unnecessary opinion.
> N.L.R.B. v. Amalgamated Clothing Workers, 430 F.2d 966, 971 (5th Cir. 1970).

Because such a procedure has rational justification, federal law does not forbid it. Written explanations are not required by federal law even in criminal cases:

> There is no requirement in law that a federal appellate court's decision be accompanied by a written opinion. . . . The Supreme Court has seen no legal impediment to an appellate court's decision of an

appeal without opinion. Furman v. United States, 720 F.2d 263, 264 (2d Cir. 1983) (citing cases).

Notably, Petitioner presents not a single case which holds that the federal Constitution requires a written explanation of an appellate decision.

Petitioner's contentions regarding Arizona law do not present issues within this Court's jurisdiction. The requirements of state law are irrelevant to what federal law requires.

Even so, Petitioner overstates what state law requires. Petitioner relies on Phelps Dodge Corp. v. Industrial Commission, 90 Ariz. 379, 368 P.2d 450 (1962) (quoted in Pet. at 5-6). Phelps actually decided that because the questions presented on appeal were not novel, "the case could be and was disposed of summarily." 90 Ariz. at 381. The Court rejected contentions in a motion for rehearing that it could not summarily decide a case.

Petitioner's quotation from Phelps is incomplete. (Pet. at 5). The complete quotation conveys the true meaning of that decision, which is that abbreviated decisions are permitted under state law:

> Certainly, parties to litigation are entitled to be advised of the reasons persuading the Court to its conclusion. Equally certain, the decision need not contain a seriatim rebuttal of points made or arguments advanced.
> 90 Ariz. at 381 (emphasis added).

The Court of Appeals stated its ground of decision. It agreed with the trial court that no evidence of damages was presented. State law requires nothing more.

The question presented is not supported by precedent and is wholly insubstantial. The petition therefore should be denied.

CONCLUSION

Because jurisdiction is lacking for want of a properly presented federal question, and in the alternative because the question presented is insubstantial, Respondent respectfully requests that the Court dismiss or deny the petition for a writ of certiorari.

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